

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

FRIDAY, THE 8TH DECEMBER 2006 / 17TH AGRAHAYANA 1928

Crl.MC.No. 3992 of 2006()

CC.1819/2004 of JUDL.MAGISTRATE OF FIRST CLASS-II, KOCHI

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PETITIONER:

MRS.MANJIT KAUR SAWHNEY,
AGED 70 YEARS, W/O.(LATE) PREHALAD SINGH SAWHNEY,
BUNGALOW NO.14A, 1ST FLOOR, MYSORE COLONY,
MAHUL ROAD, CHEMBUR, MUMBAI-400 074.

BY ADV. SRI.E.R.VENKATESWARAN
SRI.R.SREEHARI

RESPONDENTS:

1. AJAY B.AGARWAL,
S/O.BAL MUKUND AGARWAL, C.C.VIII/2080,
GUJARATHI ROAD, KOCHI-2.
2. STATE OF KERALA, THROUGH PUBLIC
PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

BY P.P. SRI. GIKKU JACOB.

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION
ON 08/12/2006, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

R. BASANT, J.

CRL.M.C.NO. 3992 OF 2006

Dated this the 8th day of December, 2006

ORDER

The petitioner – a woman, aged 70 years, a resident of Mumbai, has come to this Court aggrieved by Annexure-A5 order passed by the learned Magistrate. She faces indictment in a prosecution under Sec.138 of the N.I. Act. The matter has reached the stage of trial. Chief affidavit has already been filed by the complainant. The petitioner's counsel could not cross-examine the complainant on the date fixed for cross-examination. A day's time was sought. That was not granted by the learned Magistrate. There was no cross-examination and the case was posted for 313 examination. The petitioner – a woman, aged 70 years, has now been exempted from personal appearance. She is appearing through counsel. On the next day when the case was posted for 313 examination, the petitioner through counsel filed an application that the counsel may be permitted to cross-examine the complainant. That petition was dismissed by the impugned order which I extract below:

“Accused absent. The petition is rejected, reserving the right to file the petition in presence of accused.”

2. The learned counsel for the petitioner submits that insistence that the accused must be present to entertain the application for permission to cross-examine the complainant is most unjustified. The petitioner is exempted from personal appearance. The petitioner intends to file an application either to dispense with the 313 examination or to permit her to be represented by her counsel during such examination. At any rate, the insistence on personal appearance for filing an application for permission to cross-examine the witness by the counsel is most unjustified and unreasonable, submits the learned counsel for the petitioner.

3. I am inclined to agree with the learned counsel for the petitioner. The insistence on physical appearance of the accused to facilitate entertainment of an application for cross-examination of the complainant does not at all appear to me to be justified. I am satisfied that the impugned order deserves to be set aside and the learned Magistrate must be directed to

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consider the application on merits and pass appropriate orders. Incidentally, I may observe that I find absolutely no reason justifying the rejection of the prayer for such further opportunity for cross-examination.

4. In the result:

(a) This Crl.M.C. is allowed.

(b) Annexure-A5 order dated 17/11/2006 is set aside.

(c) The learned Magistrate is directed to consider such application afresh.

5. Hand over a copy of this order to the learned counsel for the petitioner.

Sd/-

(R. BASANT, JUDGE)

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//true copy//

P.S. to Judge